

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

RECEIVED

AUG 27 2003

Docket No. 03-09WC

APPEAL OF CHESTER CONSERVATION COMMISSION
IN RE: SITE SPECIFIC PERMIT WPS-6515

NOW COMES the Town of Chester Conservation Commission by and through its attorneys, Wadleigh, Starr & Peters, PLLC and pursuant to ENV-WC23.10 respectfully makes the following pre-hearing submission:

I Issue presented.

Whether the Department of Environmental Services acted unreasonably and erred as a matter of law in issuing a Site Specific Permit permitting a causeway across the North Pond in Chester without any terms and conditions assigned to achieve the goal of R.S.A. 485-A:1?

II Facts which appear to be deemed admitted.

The following facts are self-evident:

1. DES approved the issuance of a Site Specific Permit which required that "Water quality degradation shall not occur as a result of the project."
2. The permit contains no guidelines, recommendations, terms or conditions to effectuate the above-referenced requirement.
3. The Department approved a causeway crossing the North Pond of Chester, New Hampshire and in doing such, approved a continuous situation of non-point source pollution which will drain into the pond. The Department's approval calls for absolutely no treatment plan with regard to runoff.

4. Best management practices require at least 85% treatment.

III Witnesses who may be called.

The Conservation Commission reserves the right to call the following witnesses:

1. Jeff Adler, Dubois & King.

Mr. Adler will testify as to the fact that best management practices require a minimum of 85% treatment of runoff. The design approved by DES provides for no treatment. In Mr. Adler's professional opinion, the lack of treatment falls short of the best management practices maintained by other states and the industry with regard to the treatment of runoff. The design presented by the applicant fails to address these concerns.

2. Chuck Myette. Chair, Conservation Commission.

Mr. Myette will testify based on his experience as an engineer with regard to the inadequacies of the approved causeway. In addition, Mr. Myette will testify as to the environmental sensitivity of this area and the need for site specific treatment of runoff.

3. Andrew Hadik, Planning Board.

Mr. Hadik will testify in his capacity as a Planning Board Member. Mr. Hadik will testify regarding his review of this project and based on his experience, the concerns of the Planning Board with regard to the design of this causeway.

The Conservation Commission reserves the right to supplement these witnesses up to and including the time of hearing.

IV Exhibits necessary for the appeal.

1. Each and every document contained within the DES file;
2. Letters drafted by the firm of Dubois & King reviewing and commenting on the inadequacy of the causeway design;

3. Photographs of the North Pond area. Particularly, the area impacted by the proposed causeway.
4. Reports and observations of the North Pond area, including observations regarding the environmental sensitivity of the North Pond area.
5. Written expert report by Mr. Adler commenting on the deficits in the cause way design.
6. Minutes of the Planning Board.
7. North Pond wetland evaluation by Daniel Gieger, Wetland Scientist.
8. Communication from the Conservation Commission to the Town of Chester Planning Board.
9. Any correspondence from the Commission to DES.
10. Plans for the causeway design.
11. The Conservation Commission reserves the right to supplement this list of evidence up to and including the time of hearing.

V. Matters which may aid in settlement.

It is the position of the Town of Chester Conservation Commission that the causeway, as approved by DES fails to protect this prime wetland site from degradation. There are no provisions for capturing or treating any runoff from the roadway over this causeway. The failure to provide for any treatment plan creates a continuous situation of non-point source pollution which will drain into a pond, which, by its very nature, is not self-flushing. Best management practices in the surrounding states and the industry require a minimum of 85% treatment. For purposes of resolution, the Conservation Commission will accept a design which meets these

best management practices standards.

Respectfully submitted,

CHESTER CONSERVATION
COMMISSION

By its attorneys,
Wadleigh, Starr & Peters, PLLC

COPY

Date: August 25, 2003

By:

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CERTIFICATION

I hereby certify that I have mailed a copy of the foregoing on August 25, 2003 to Mark R. Harbaugh, DES Legal Unit and Bryan Remillard.

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Dean B. Egger